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Before the  
Federal Communications Commission  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

In the Matters of

Implementation of the  
Telecommunications Act of 1996:

Reform of Filing Requirements  
and Carrier Classifications

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CC Docket No. 96-193

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company ("SWBT") hereby files its Comments in response to the Order and Notice of Proposed Rulemaking ("NPRM")<sup>1</sup> regarding implementation of Section 402(b)(2)(B) & (c) of the Telecommunications Act of 1996 (the "1996 Act").

I. THE 60-DAY CAM FILING REQUIREMENT

Section 402(b)(2)(B) requires that the Commission "permit any common carrier . . . to file cost allocation manuals and ARMIS reports annually, to the extent such carrier is required to file such manuals or reports."<sup>2</sup> In contrast, Section 64.903(b) of the Commission's Rules provides as follows:

Carriers must update their manuals at least quarterly, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at least 60 days before the carrier plans to implement the changes.<sup>3</sup>

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<sup>1</sup> FCC 96-370, released September 12, 1996.

<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) to be codified at 47 U.S.C. §§151 et seq.

<sup>3</sup> 47 C.F.R. §64.903(b).

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While the Commission recognizes that “the 1996 Act supersedes this requirement that cost allocation manuals be filed more frequently than annually,”<sup>4</sup> the Commission only eliminates the regular quarterly updates and proposes to retain the remainder of the CAM filing requirements in Section 64.903(b), that is the 60-day notice requirement for cost apportionment and time reporting procedure changes.<sup>5</sup> Retention of the 60-day notice requirement is contrary to Section 402 of the 1996 Act because, in effect, local exchange carriers (“LECs”) will be required to file revisions to their CAMs more frequently than on an annual basis.

The Commission cannot properly claim to have implemented Section 402(b)(2)(B) fully by eliminating the quarterly filing, but not the 60-day notice requirement. Each of these two filing requirements has the effect of requiring filings more often than on an annual basis. In the case of quarterly filings, if the LEC has any changes at all during the quarter, then it must submit the quarterly CAM filing. If the LEC had no changes during a quarter, it was not required to make a CAM filing; instead, it was merely required to submit a letter indicating that it had no changes to report. Similarly, if a LEC had no changes in cost apportionment or time reporting procedures, it was not required to submit a CAM filing, but if such a change was anticipated, Section 64.903 required a CAM filing 60 days in advance. In either case, the quarterly filings or the 60-day notice requirement, the event that triggers the necessity of a CAM filing is a change in

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<sup>4</sup> NPRM, ¶6.

<sup>5</sup> NPRM, ¶21.

the LEC's operations or nonregulated accounting procedures. The elimination of only one of the two types of filings does not eliminate all non-annual CAM filing requirements.

In addition, elimination of only the quarterly filings does not accomplish the regulatory relief intended by Section 402(b)(2)(B). After elimination of the quarterly CAM filings, a LEC may have an equal or greater number of CAM filings per year. For example, SWBT (like other LECs) has typically included its cost apportionment procedure changes in the regular quarterly filings. Now that the regular quarterly filings have been eliminated, SWBT would be required to file the cost apportionment change as a standalone filing because there would be no regular quarterly filing in which to include it. As a result, SWBT will have an equal or greater number of CAM filings than it did before the 1996 Act. In addition, LECs have been required to make CAM filings when the Commission adopted accounting changes, such as the reclassification of inmate payphones<sup>6</sup> and the recent reclassification of all other payphones, which required CAM filings in July and February, respectively. Additional similar accounting changes are anticipated in the future, and if the Commission continues requiring CAM changes on dates other than the date of the annual CAM filing, the burden of frequent CAM filings will be further increased, instead of being reduced as intended by the 1996 Act.

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<sup>6</sup> Even though the Commission granted a stay of the requirement to file a CAM revision for inmate payphones, SWBT and other LECs had already filed their CAM revisions because the stay was not granted until the due date of the CAM filing (July 3, 1996). See Petitions For Waiver and Partial Reconsideration or Stay of Inmate-Only Payphones Declaratory Ruling, RM-8181, Order, 11 FCC Rcd 8013, released July 3, 1996.

The NPRM explains the retention of the 60-day notice requirement by stating that its “purpose remains valid.” The NPRM states that the purpose of the 60-day requirement “is to help [the Commission] ensure that each carrier’s cost allocation manual reflects the carrier’s new ventures and changes in the carrier’s accounting for its existing ventures.”<sup>7</sup> This is a weak pretext for ignoring the mandate of the 1996 Act. First of all, a new venture does not necessarily require a 60-day CAM filing. If the LEC’s CAM already contains all of the necessary cost pools and time reporting procedures to be used for the new venture, the 60-day notice requirement would not apply. Secondly, the vast majority of CAM changes have no material impact on the ARMIS Report 43-03 reported results. In any event, Section 402(b)(2)(B) did not provide an exception allowing the Commission to require the 60-day CAM filings.

Further, Congress intended Section 402(b)(2)(B) to reduce the burden of the Commission’s regulations. For example, in the Conference Committee’s Joint Explanatory Statement, Congress stated: “new subsection (b) of Section 402 of the Conference Agreement addresses regulatory relief . . . . New subsection (b) . . . also eliminates the Section 214 approval requirement for extension of lines and permits carriers to file ARMIS reports annually.”<sup>8</sup> There is no reason that all CAM filings could not be combined in a single year-end annual CAM filing. The cost apportionment and time reporting changes could be reviewed along with all of the other CAM changes at the time of the annual CAM filing. Besides, the purpose of the cost allocation

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<sup>7</sup> NPRM, ¶21.

<sup>8</sup> Joint Explanatory Statement of the Committee of Conference, Report No. 104-458, 104th Cong., 2d Sess., at 186 (January 31, 1996).

rules - - to prevent cross-subsidy at the expense of the LEC's regulated service customers - - will not be compromised by allowing annual CAM filings. Among other reasons, the Commission retains the authority to audit compliance with the cost allocation rules as it has done in the past and LECs will continue to be subject to the independent audit requirement in Section 64.904. Besides, as SWBT's parent company, SBC, explained fully in its Comments in CC Docket No. 96-150, the Commission's price cap regulation and similar forms of state incentive regulation, such as price freezes, sever the relationship between cost allocations and prices.<sup>9</sup> As a result of such price regulation that is not based on rate-of-return as well as competition's downward pressure on prices, the importance of relying on cost allocation rules and frequent CAM filing requirements to prevent cross-subsidy, is eliminated, or at least substantially reduced. Thus, in the current environment, streamlined regulation is especially appropriate for CAM filing requirements consistent with the procompetitive, deregulatory intent of the 1996 Act and the explicit mandate of Section 402(b)(2)(B).

Therefore, SWBT submits that to be consistent with Section 402(b)(2)(B) of the 1996 Act, the Commission must permit LECs to combine all of their CAM changes in a single, annual filing at the end of each year.<sup>10</sup> SWBT is not opposed to a requirement that it informally notify

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<sup>9</sup> See Comments of SBC Communications Inc., CC Docket No. 96-150, filed August 26, 1996, at 2-6.

<sup>10</sup> It is interesting to note that when the CAM filing requirements were first adopted in CC Docket No. 86-111, the Commission did not contemplate quarterly filings. Instead, the Commission described an initial comprehensive CAM filing that would be reviewed in detail by the Commission. It was only later in the context of review of individual LECs' CAMs that the Commission initially adopted the quarterly and 60-day CAM filing requirements. See, e.g.,

the Commission of cost apportionment and time reporting changes via a letter to the Accounting and Audits Division at the time of implementation of such changes. However, if a letter, as opposed to a formal CAM filing, is used to enable the Commission to monitor these types of changes, there should not be multiple comment cycles for each of these informal notice letters. Instead, any continuing public comment cycle should be conducted at the end of the year after the annual CAM filing that would incorporate all of the previous year's cost apportionment and time reporting changes.

In the alternative, the NPRM proposes to prohibit CAM filings other than the annual filing and to require LECs "to seek a waiver of our rules before implementing changes to their [CAMs] as filed."<sup>11</sup> This alternative is clearly at odds with the underlying deregulatory intent of Section 402. In fact, this alternative would be punitive because apparently it would require LECs to freeze their operations pending approval of CAM waivers.<sup>12</sup> Given the LECs' experience in

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SWBT CAM Review Order, 3 FCC Rcd 446 ¶¶121, 122 (1988). Later, in 1991, the Commission codified these requirements in Section 64.903. Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I LEC Safeguards, 6 FCC RCD 7571, Appendix B (1991). Elimination of the quarterly and 60-day CAM filing requirements would merely revert to the CAM filing requirement as originally contemplated in CC Docket No. 86-111, without the complexity later added by the quarterly and 60-day update requirements.

<sup>11</sup> NPRM, ¶21.

<sup>12</sup> For example, applying this alternative to the Commission's recently adopted Open Video Systems (OVS) certification procedures, a LEC's commencement of OVS service apparently would be prohibited absent a waiver (unless the service commencement date happened to coincide with the annual CAM filing). See Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems, CS Docket No. 96-46, released June 3, 1996, ¶33 ("we will require a certification that the changes to the manuals will be filed 60 days before service is offered.")

obtaining waivers under similar rules in the past (e.g., Part 36 study area waivers),<sup>13</sup> it would be extremely unlikely that a LEC could obtain a waiver prior to the annual CAM filing date.<sup>14</sup> As a result, operational changes with a CAM impact could only occur once a year at the beginning of the year. Such a requirement would increase tremendously the burden of CAM filing requirements because it would have a direct impact by prohibiting new developments during most of the calendar year. SWBT does not understand how the Commission can seriously believe that this alternative would comply with the deregulatory intent of the 1996 Act.<sup>15</sup> It is illogical for the Commission to propose to accomplish regulatory relief by substituting for the 60-day notice requirement a prohibition against operational changes that would have resulted in 60-day notices. This is certainly not a viable alternative and it is more offensive to Section 402(b)(2)(B) than the proposal to retain the 60-day notice requirement. However, the suggestion

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<sup>13</sup> See, e.g., Memorandum Opinion and Order, 7 FCC Rcd 2161 (1992) (Part 36 waiver request filed 12/7/90, granted 3/24/92); Memorandum Opinion and Order, 10 FCC Rcd 5055 (1995) (Part 36 waiver request filed 5/5/94, granted 5/10/95); Memorandum Opinion and Order, 10 FCC Rcd 9966 (1995) (Part 36 waiver request filed 6/9/94, granted 8/11/95); Public Notice, AAD Nos. 93-80 et seq., DA 93-953, 8 FCC Rcd 5152 (Request for waiver of Section 32.27 filed in June/July 1993, no ruling yet); Public Notice, AAD 94-125, DA 94-1232, 9 FCC Rcd 6700 (1994) (Request for clarification or waiver of pole attachment orders filed 8/26/94, no ruling yet).

<sup>14</sup> Even if waivers were considered in a timely fashion, the procedure for considering waivers does not provide any regulatory relief compared to the processing of 60-day notice requirements. In both cases, the Common Carrier Bureau usually conducts a public comment cycle before ruling.

<sup>15</sup> In fact, the NPRM's alternative proposal appears to apply not only to cost apportionment and time reporting changes but to all CAM changes. Thus, the proposal could be interpreted as suggesting that other CAM changes could also not be implemented on any date other than the annual CAM filing.

of a more burdensome alternative does not justify retention of a requirement that is also contrary to the 1996 Act, especially when the true purposes of the CAM filings can be accomplished by alternative, less burdensome methods (i.e., annual CAM filings, independent audit, and Commission audits).<sup>16</sup>

## II. OTHER PROPOSALS

The NPRM delegates authority to the Common Carrier Bureau ("Bureau") to modify the ARMIS 43-01 and 43-06 to reflect the fact that they will be annual filings. While the NPRM did not seek comment on the form and content of these reports and SWBT would expect the Bureau to do so, SWBT believes that the modified reports should be simplified to contain only that information which is necessary. For example, the ARMIS 43-01 should contain cumulative data for the entire twelve month period and should not contain data for each of the four quarters previously contained in the quarterly ARMIS 43-01. In other words, the content of the ARMIS 43-01 report should be simplified to eliminate the quarterly data previously contained in the report when it was a quarterly filing. Other data that is no longer necessary should also be deleted from these reports.<sup>17</sup>

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<sup>16</sup> Even these alternative, less burdensome methods should be reconsidered and streamlined in light of price cap regulation and competition. See Comments of SBC Communications, Inc., CC Docket No. 96-150, filed August 26, 1996.

<sup>17</sup> SWBT will provide other suggestions concerning the ARMIS reports once the Bureau publishes its proposed changes for public comment.



SWBT concurs with the proposal in paragraph 38 of the NPRM to eliminate the requirement for a supplemental report contained in Section 43.21 of the Commission's Rules. It is obvious that this report is not necessary.

SWBT also concurs with the proposal to change to a uniform April 1 filing date for the annual reports required by Sections 43.21(a) and 43.21(d).

### III. CONCLUSION

Consistent with Section 402(b)(2)(B)'s elimination of any requirement for CAM filings more frequent than annual, the Commission must delete the 60-day CAM filing requirement from Section 64.903(b). Further, the Commission should avoid imposing new, onerous requirements, such as the proposed prohibition of operational changes that have a CAM impact, because these would substantially and unnecessarily increase the burden of the Commission's accounting safeguards contrary to the 1996 Act and the Commission's own stated intent in CC Docket No. 96-150.<sup>18</sup>

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<sup>18</sup> Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, 11 FCC Rcd 9054 ¶¶ 8, 12 (1996) (“[W]e continue to seek to minimize the burden our rules impose upon those subject to them . . .”).

Respectfully submitted,

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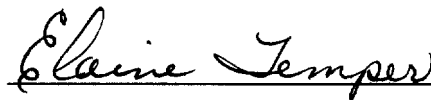
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October 15, 1996

Certificate of Service

I, Elaine Temper, hereby certify that the Comments of Southwestern Bell Telephone Company on Docket No. 96-193, has been served this 15th day of October, 1996 to the Parties of Record.

A handwritten signature in cursive script, reading "Elaine Temper", is written over a horizontal line.

Elaine Temper

October 15, 1996

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